

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
 Plaintiff,)
)
v.) 04 CV 12655 RWZ
)
\$6,442.00 IN U.S. CURRENCY,)
 Defendant.)

EXHIBITS IN SUPPORT OF CLAIMANT CARMONA'S MOTION TO DISMISS

Now comes Claimant Hugo Carmona and files three exhibits in support of his motion to dismiss. They are copies of actual documents.

- 1(a)-(c) The cover letter, claim and judicial forfeiture demand filed with the Bureau of Customs on September 16, 2004.¹
2. Hugo Carmona's motion to suppress and affidavit filed in his pending case in Malden, Massachusetts District Court, Complaint 04/1821.
3. An economic report for the City of Lynn by city-data.com.

1

ATTESTATION

With respect to the date of filing, Attorney J. Thomas Kerner attests that the originals of exhibits 1(a)-(c) were placed in the U.S. Mail, postage prepaid, on September 16, 2004.

Sworn to under the pains and penalties of perjury on this 10th day of February, 2005

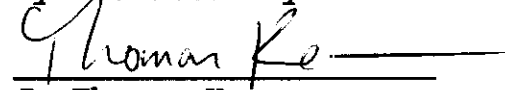


J. Thomas Kerner

Respectfully Submitted

HUGO CARMONA

By his attorney:

A handwritten signature in cursive script, appearing to read "J. Thomas Kerner", is written over a horizontal line.

J. Thomas Kerner

MA BBO # 552373

Attorney at Law

230 Commercial Street

First Floor

Boston, MA 02109

(617) 720-5509

J. Thomas Kerner

ATTORNEY AT LAW

September 16, 2004

Mr. Stephen Leonard
Bureau of Customs and Border Protection
Fines, Penalties and Forfeiture Branch Chief
10 Causeway Street
Room 623
Boston, MA 02222-1059

Re: Seizure No. 2004-0401-000141-01
\$6,442 seized from Hugo Carmona on or about May 25, 2004 in Malden, MA.

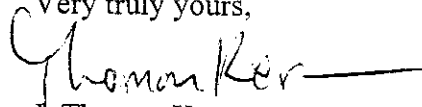
Dear Mr. Leonard:

Enclosed, please find Mr. Carmona-Londona's completed and signed seized asset claim form. Additionally, Mr. Carmona-Londona has requested that you refer his claim to the United States Attorney pursuant to option 3 on the Election of proceedings CAFRA form AF which has been completed, signed and dated.

I will accept service of process on behalf of Mr. Carmona-Londona.

Thank you.

Very truly yours,


J. Thomas Kerner

JTK:ms

EX.
1(a)

U.S. CUSTOMS AND BORDER PROTECTION
SEIZED ASSET CLAIM FORM

Name: Hugo Carmona-Londana Seizure No. 2004-0401-000141-01
Address: c/o J. Thomas Kerner
Attorney at Law, 230 Commercial St. (IMPORTANT: BE SURE TO
Telephone No: () Boston, MA 02109 COMPLETE ALL PARTS BELOW)
617 720 5509

As authorized by 18 USC 983(a)(2)(A), I request that the Government file a complaint for forfeiture on the seized property described below.

PART I

List all the items in which you claim an interest. Include sufficient information to identify the items, such as serial numbers, make and model numbers, aircraft tail numbers, photographs, and so forth. Attach additional sheets of paper if more space is needed.

\$ 6,442.00

PART II

State your interest in each item of property listed above. Attach additional sheets of paper if more space is needed.

The money belongs to me.

PART III (ATTESTATION AND OATH)

I attest and declare under penalty of perjury that the information provided in support of my claim is true and correct to the best of my knowledge and belief.

HUGO CARMONA-LONDONA 9-15-04
Name (Print) Date

HUGO CARMONA
Signature

A FALSE STATEMENT OR CLAIM MAY SUBJECT A PERSON TO PROSECUTION UNDER 18 U.S.C. 1001 AND/OR 1621 AND IS PUNISHABLE BY A FINE AND UP TO FIVE YEARS IMPRISONMENT.

EX.
1 (b)

ELECTION OF PROCEEDINGS CAFRA FORM AF

NOTE: THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR PETITION OR OFFER. IF YOU DO NOT COMPLETE AND RETURN THIS FORM, CUSTOMS SHALL PROCEED TO FORFEIT THE PROPERTY ADMINISTRATIVELY, REGARDLESS OF WHETHER YOU FILE A PETITION OR OFFER.

TO: CUSTOMS FINES, PENALTIES AND FORFEITURES OFFICER:

I understand that property in which I have an interest has been seized by the Bureau of Immigration and Customs Enforcement under Case No. 2004-0401-000141-01.

Check ONLY ONE (1) of the following choices:

1. ☐ I REQUEST THAT U.S. CUSTOMS AND BORDER PROTECTION DELAY FORFEITURE PROCEEDINGS AND CONSIDER MY PETITION OR OFFER ADMINISTRATIVELY. My petition or offer is attached. By making this request, I understand that I am giving up my right for the immediate commencement of administrative forfeiture proceedings, as provided under title 19, United States Code (USC), section 1607 and title 19, Code of Federal Regulations (CFR), Part 162. If administrative forfeiture has begun, it will be stopped until my petition or offer is considered. However, I understand that at any time I can request, in writing, that U.S. Customs and Border Protection begin administrative forfeiture proceedings and U.S. Customs and Border Protection will continue to consider my petition or offer. I also understand that at any time I can file a claim with U.S. Customs and Border Protection (as described in Box 3 below) and U.S. Customs and Border Protection consideration of my petition or offer will stop and the case will be sent to the U.S. Attorney for court action.

2. ☐ I ABANDON THE PROPERTY AND I REQUEST THAT U.S. CUSTOMS AND BORDER PROTECTION BEGIN ADMINISTRATIVE PROCEEDINGS TO FORFEIT THE PROPERTY. Please immediately begin publication of the notice of seizure and intent to forfeit. I abandon any claim or interest in the property.

3. ☒ I REQUEST THAT THE U.S. CUSTOMS AND BORDER PROTECTION SEND MY CASE FOR COURT ACTION. Please immediately send the case to the U.S. Attorney for court action. I have fully completed, signed and attached a SEIZED ASSET CLAIM FORM as required by law. I understand that if I have not fully completed this form, Customs will treat my submission as a petition for relief under Box 1 described above.

HUGO CARMONA
Signature
HUGO CARMONA-LONDOA
Printed Name

9-15-04
Date

Ex.

1 (c)

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

MALDEN DIST.
CT. No. 04/1821

COMMONWEALTH OF MASSACHUSETTS

V.

HUGO CARMONA

MOTION TO SUPPRESS

Now comes the defendant and, pursuant to Rule 13 of the Massachusetts Rules of Criminal Procedure, moves this Honorable Court to suppress, for this case and all others, any and all evidence seized from the defendant and the defendant's car on May 25, 2004. Further, all of the defendant's statements to the law enforcement officers should be suppressed.

Evidence:

In support of this motion the defendant contends that in violation of M.G.L. c. 276, §1; the United States Constitution, Fourth Amendment; and the Massachusetts Declaration of Rights, Article XIV, the Massachusetts State Police, without a warrant, seized items from the defendant and his car. The police seized, among other items, a Massachusetts drivers license, a motor vehicle registration for a 2002 Nissan Altima, \$6,442.00 and other documents. The Commonwealth intends to introduce the seized items as evidence against the defendant in the above referenced complaint. Commonwealth v. Acosta, 416 Mass. 279

EX.
2

(1993) and Commonwealth v. Huffman, 385 Mass. 122 (1982).

The defendant has standing to file this motion due to the fact that the defendant is accused of possessing the seized items. Commonwealth v. Amendola, 406 Mass. 592 (1990).

Statements:

The police seized the defendant and thus he was in custody. The defendant's statements were obtained after the defendant was in custody and without advising him of his rights pursuant to Miranda v. Arizona, 384 U.S. 436, 476 (1966), rehearing denied 385 U.S. 890. The defendant did not believe that he was free to not answer the questions put to him by the police and his statements to the police were not voluntary.

If a person is questioned in a custodial situation without first being advised of his Miranda rights, all of the person's statements are inadmissible at trial. Id. Any subsequent statements by the person (including ones made after receiving a Miranda warning) are presumed to be tainted by the initial illegally obtained statement. Commonwealth v. Osachuk, 418 Mass. 229 (1994) and Commonwealth v. Smith, 412 Mass. 823 (1992).

Additionally, pursuant to Article 12 of the Massachusetts Declaration of Rights; the Fifth Amendment to the United States Constitution; Commonwealth v. Ward, 426 Mass. 290 (1997) and Commonwealth v. Smith, 426 Mass. 76 (1997), statements which are


not voluntary must be suppressed.

Hearing Request:

The defendant respectfully requests an evidentiary hearing and leave to file a memorandum of law following the hearing.

Respectfully Submitted,

HUGO CARMONA,
By his attorney:



J. THOMAS KERNER
Attorney at Law
230 Commercial Street
Boston, MA 02109
(617) 720-5509

AFFIDAVIT OF COUNSEL

Now comes Hugo Carmona and attests that on May 25, 2004, as I approached 376 Salem Street, Malden, police officers confronted me in a manner which caused me to believe that I was not at liberty to leave. I was in police custody and I had to answer their questions. While I was in police custody and without advising me of my rights pursuant to Miranda, I was ordered to produce my drivers license and to answer questions about my identity. None of my acts or statements were done or made voluntarily. The police without permission then searched my car and seized documents, items of value and currency from the car.

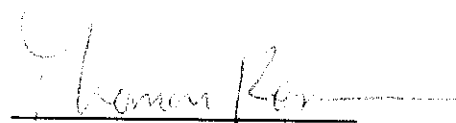
th
24 Sworn to under the pains and penalties of perjury on this
day of ~~January, 2005.~~
December, 2004

ORIGINAL SIGNED
HUGO CARMONA

CERTIFICATE OF SERVICE

Now comes J. Thomas Kerner and certifies that a copy of the attached document has been mailed, postage prepaid, to:

Mr. Gregory P. Teran
Special Assistant District Attorney
14 Summer Street
Malden, MA 02148
(781) 322 2020



J. THOMAS KERNER
Attorney at Law
230 Commercial Street
Boston, MA 02109
(617) 720-5509

Date: 12/22/04

Back to: [Lynn main page](#), [Massachusetts](#), [United States](#).

Based on the data from 1997 when the population of Lynn, Massachusetts was 80,819

| Industry Description | Number of Establishments | Number of Employees | Annual Payroll (\$1,000) |
|---|--------------------------|---------------------|--------------------------|
| Manufacturing | 67 | 6,870 | \$325,194 |
| ■ Food mfg | 10 | 1,181 | \$39,500 |
| ◆ Dairy product mfg | 1 | 500-999 | withheld |
| ● Dairy product (except frozen) mfg | 1 | 500-999 | withheld |
| ▶ Fluid milk mfg | 1 | 500-999 | withheld |
| ■ Transportation equipment mfg | 3 | 2500-4999 | withheld |
| ◆ Aerospace product & parts mfg | 1 | 2500-4999 | withheld |
| ● Aerospace product & parts mfg | 1 | 2500-4999 | withheld |
| ▶ Aircraft engine & engine parts mfg | 1 | 2500-4999 | withheld |
| Wholesale trade | 61 | 856 | \$31,414 |
| ■ Wholesale trade, durable goods | 40 | 553 | \$18,750 |
| ◆ Motor vehicle & motor vehicle parts & supplies whsle | 3 | 20-99 | withheld |
| ◆ Hardware, & plumbing & heating equipment & supplies whsle | 6 | 100-249 | withheld |
| ● Plumbing & heating equipment & supplies | 3 | 100-249 | withheld |

| Industry Description | Number of Establishments | Number of Employees | Annual Payroll (\$1,000) |
|--|--------------------------|---------------------|--------------------------|
| (hydronics) whsle | | | |
| ◆ Machinery, equipment, & supplies whsle | 12 | 206 | \$7,668 |
| • Industrial machinery & equipment whsle | 8 | 178 | \$6,969 |
| ◆ Miscellaneous durable goods whsle | 7 | 100-249 | withheld |
| • Sporting & recreational goods & supplies whsle | 2 | 20-99 | withheld |
| • Recyclable material whsle | 3 | 20-99 | withheld |
| ■ Wholesale trade, nondurable goods | 21 | 303 | \$12,664 |
| ◆ Paper & paper product whsle | 4 | 20-99 | withheld |

| Industry Description | Number of Establishments | Number of Employees | Annual Pay (\$1,000) |
|---|--------------------------|---------------------|----------------------|
| • Stationery & office supplies whse | 2 | 0-19 | with |
| ◆ Apparel, piece goods, & notions whse | 4 | 20-99 | with |
| • Footwear whse | 2 | 20-99 | with |
| ◆ Grocery & related products whse | 6 | 20-99 | with |
| • Fish & seafood whse | 1 | 20-99 | with |
| ◆ Chemical & allied products whse | 3 | 20-99 | with |
| • Other chemical & allied products whse | 3 | 20-99 | with |
| ◆ Miscellaneous nondurable goods whse | 3 | 20-99 | with |
| • Tobacco & tobacco product whse | 1 | 20-99 | with |
| Retail trade | 213 | 2,658 | \$40 |
| ▪ Motor vehicle & parts dealers | 30 | 366 | \$12 |
| ◆ Automotive parts, accessories, & tire stores | 14 | 101 | \$2 |
| • New car dealers | 6 | 217 | \$8 |
| ▶ New car dealers | 6 | 217 | \$8 |
| • Used car dealers | 7 | 35 | \$7 |
| ▶ Used car dealers | 7 | 35 | \$7 |
| ◆ Other motor vehicle dealers | 3 | 13 | |
| • Recreational vehicle dealers | 1 | 0-19 | with |
| ▶ Recreational vehicle dealers | 1 | 0-19 | with |
| ◆ Automotive parts, accessories, & tire stores | 14 | 101 | \$2 |
| • Automotive parts & accessories stores | 10 | 73 | \$2 |

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UNITED STATES OF AMERICA,)
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v.) 04 CV 12655 RWZ
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\$6,442.00 IN U.S. CURRENCY,)
 Defendant.)

CERTIFICATE OF SERVICE

Now comes counsel for claimant Hugo Carmona and certifies
that a copy of the attached filing has been served on the United
States by sending a copy to:


Ms. Shelby D. Wright
Assistant U.S. Attorney
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

Date

2/10/05

Respectfully Submitted
HUGO CARMONA

By his attorney:



J. Thomas Kerner
MA BBO # 552373
Attorney at Law
230 Commercial Street
First Floor
Boston, MA 02109
(617) 720-5509